

REMARKS

Reconsideration and withdrawal of the rejection of all the claims now in the application (i.e., claims 1-3, 5, 8, 9, 11, 14 is respectfully requested in view of the foregoing amendments and the following remarks.

Initially, the Examiner objected to the drawings because the three concave sides of the pen claimed in claims 6 and 12 were not shown in the drawings. As discussed below, Applicant has amended claim 1 to include that the one side of the pen is flat and has cancelled claims 6 and 12 which obviates the need for any drawing changes.

The Examiner then went on to reject the claims as being obvious and therefore unpatentable over Balasty in view of Kim. The Examiner considered that Balasty disclosed a writing instrument to be held in a triangular aperture between a user's forefinger, middle finger and thumb comprising a grip having a triangular cross-section along the longitudinal axis thereof. The Examiner then stated that Kim disclosed a writing instrument having a triangular cross-section wherein the sides are provided with concavities that extend along the length of the instrument.

Amended claim 1 is a combination of original claims 1 and 4. The Examiner objected to claim 4 on the grounds of a lack of inventiveness over Balasty in view of Kim and Rusk, however when these documents are considered in full it can be seen that they do not lead the skilled man to the present invention.

Balasty shows an instrument grip with a triangular cross section while Kim shows an instrument grip with a triangular cross section with concavities on each side. In both cases each of the three sides is the same so the instrument can advantageously be held at any orientation. As such these two documents present alternative constructions which it is not possible to combine. There is nothing in either of these

documents to suggest having different types of sides (flat and curved) in one grip. There is no suggestion in either Kim or Balasty for adding a flat side to the concave sides of Kim. Column 2, lines 34-41 of Kim teach that by using concave surfaces the forefinger, middle finger and the thumb can grip the barrel firmly without the need for applying pressure to the fingers which can prove to be very tiresome especially when writing over a long period of time. This clearly teaches away from removing the concavity for one of the fingers. Absent some motivation to combine the references, a rejection based on a prima facie case of obviousness is improper.

Rusk is quite different to Balasty and Kim because it shows a generally ball-shaped grip which increases then decreases in cross-sectional girth along its axis. As such it shows a grip which is shaped in three dimensions as opposed to in just two.

Rusk does not really have "sides" as such, rather it is a ball with "gripping surfaces" carved into it. Each of these gripping surfaces is generally bowl shaped. At no point along the cross-sectional length of the grip is there two concave sides and one substantially flat side. At all times all three sides are concave. It is true that at one particular axial point the third side is quite shallow, but this shape obviously doesn't extend along the length of the grip because the third gripping surface is advantageously axially sculpted to fit around the third finger.

Rusk would be seen by the man skilled in the art as a quite different construction to Balasty and Kim because it changes its cross-sectional shape along its axial length. This is its principal advantageous feature, and in relation to the third gripping surface, it stops the instrument sliding back and forth. Therefore, it would be quite counter intuitive to abandon that feature and revert to the axially regular

constructions shown in Balasty and Kim. Why would anyone do that? The answer is that they wouldn't.

The Examiner is guilty of cherry-picking different features from prior art documents and combining them to arrive at the present invention. It must be stated that just because individual features of an invention are shown in the prior art, it is not necessarily obvious to combine them. In this case it manifestly is not due to the context in which those features are shown.

Taking one flat side from Balasty, and combining it with two curved sides from Kim, in view of what is taught in Rusk would be completely counter intuitive and disadvantageous. The universal usability, ease of construction and sleek design of Balasty and Kim would be lost if any of the axially changing gripping surfaces of Rusk were introduced; and the clear ergonomic advantages of Rusk would be lost if one cross-sectional point were elongated to make it axially regular. No skilled man who read and understood the full context of all three of these documents would ever do what the Examiner is suggesting. The skilled man would regard each construction as advantageous for different reasons and would see no reason to change any of them or try to combine them in any way.

A grip with two concave sides and one flat side, which is the same along its axial length is clearly inventive over the cited prior art.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

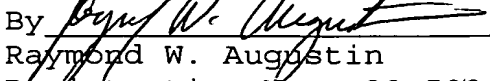
Application No.: 10/527,885

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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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